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DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-199341

DATE: November 28, 1980

MATTER OF: Department of Labor - *Questions Concerning* Union Dues Allotments -  
Unfair Labor Practice Settlement

- DIGEST: 1. Federal Labor Relations Authority has issued complaint charging Department of Labor with unfair labor practice in wrongfully terminating 40 dues allotments for AFGE Local 12 from March to June 1979. The Department proposes to settle by reimbursing the union for the amount of dues it should have received. Federal Labor-Management Relations Statute, 5 U.S.C. chapter 71, provides for dues allotments to unions and authorizes Authority to remedy unfair labor practices, including failure to comply with statute. We have no objection to settlement, if approved by the Regional Director of the Authority.
2. If an employee authorizes the deduction of union dues from his pay, a Federal agency is obligated to withhold the amount from the employee and pay it over to the union. The payment of the dues is a personal obligation of the employee, and where the agency wrongfully fails to withhold the dues and later reimburses the union pursuant to the settlement of unfair labor practice charges, the agency must either collect the dues from the employee or waive collection of the debt.

This decision is in response to a request by Alfred M. Zuck, Assistant Secretary for Administration and Management, Department of Labor, for an advance decision concerning two different questions involving dues allotments. We shall address the second question first.

1. Reinstatement of 71 Dues Allotments  
Revoked by the Department of Labor in March 1980

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During contract negotiations between American Federation of Government Employees Local 12 and the Department, the union alleged that 71 dues allotments had been wrongfully terminated on the first full pay period after March 1, 1980. Pursuant to an agreement with AFGE Local 12 dated April 23, 1980, the Department restored the allotments of the 71 employees effective with the pay period ending April 19, 1980. The 71 employees have filed an unfair labor practice charge against the Department of Labor alleging that they were not given an opportunity to revoke their dues within 1 year. In order to settle this charge, the Department of Labor has requested our authorization to reimburse the 71 employees for dues withholding allotments made after March 1, 1980.

Subsequent to the Department's letter to us, the General Counsel of the Federal Labor Relations Authority has decided not to issue a complaint on this charge because the 71 employees did not have the right under the statute to have their dues allotments terminated prior to September 1, 1980. Since the charge has been dismissed, the question is moot and no answer is required.

2. Wrongful Termination of 40 Dues Allotments

Prior to January 11, 1979, the effective date of the Federal Labor-Management Relations Statute (5 U.S.C. chapter 71, § 7101 et seq.), enacted as title VII of the Civil Service Reform Act of 1978, Public Law 95-454, October 13, 1978, 92 Stat. 1192, an employee could revoke his dues allotment to a union semi-annually under section 21 of Executive Order 11491, as amended. On and after January 11, 1979, dues allotments may only be revoked after a period of 1 year. 5 U.S.C. § 7115(a).

On February 23, 1979, the Federal Labor Relations Authority issued a Notice and Direction to heads of agencies and unions directing them not to effectuate employee revocation of dues assignments received by the agencies on or after January 11, 1979, but to continue to withhold dues and maintain these funds in a suspense or escrow account pending further advice from FLRA. Despite this notice the Department

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of Labor honored 40 dues allotment revocations received between January 11, 1979, and March 1, 1979, and made them effective for the pay periods ending March 24, 1979, through June 16, 1979.

The Authority, on April 19, 1979, interpreted 5 U.S.C. § 7115(a) and ruled in effect that, absent an agreement to the contrary, the annual dues revocation date would be either September 1, 1979, or the anniversary of the date on which the employee first authorized dues withholding, whichever is later. See Interpretation and Guidance (FLRA No. O-PS-1). The ruling applies only to revocation requests submitted to agencies on or after January 11, 1979.

On September 18, 1979, AFGE Local 12 filed unfair labor practice charges concerning the Department's setting of March 1, 1979, as the effective date for employees to revoke dues withholding allotments. Amended charges were filed on March 14 and May 6, 1980. The union alleged that the Department had wrongfully terminated 40 dues withholding allotments during the period beginning March 3, 1979, and ending June 16, 1979. On May 16, 1980, the Regional Director of the FLRA issued a formal complaint and notice of hearing on the charge. FLRA Case No. 3-CA-506. The Union and the Department now propose to settle the unfair labor practice charge by having the Department reimburse the local for the dues of the 40 employees which had been revoked effective for the payroll periods ending March 24, 1979, through June 16, 1979, until the first full pay period beginning after September 1, 1979. No payments would be required from the 40 employees. The Department of Labor is prepared to settle the unfair labor practice complaint in this manner if we approve the payment.

In a prior decision, we held that, where union dues were not collected by an agency due to administrative error, the agency may not use appropriated funds to directly pay union dues without either seeking to recover the amounts from the employees or exercising its authority to waive collection from the employees under 5 U.S.C. § 5584. B-180095, October 2, 1975. That case arose under section 21 of Executive

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Order 11491, as amended, and the controlling issue here is to what extent we should follow our 1975 decision in a case arising under the new statutory labor-management relations program.

The Federal Labor-Management Relations Statute, 5 U.S.C. chapter 71 differs materially from the prior Executive order program. Federal agencies are now under a statutory duty, upon receiving an employee's written authorization, to withhold union dues from the employee's pay and to pay the allotment to the exclusive representative for the bargaining unit. The allotment is made without cost to the union or the employee. 5 U.S.C. § 7115(a). Dues "checkoff" is no longer dependent upon an agreement between an agency and a labor union as it was under section 21 of the order, and a dues allotment under section 7115(a) may not be revoked for a 1-year period as opposed to 6 months under section 21. Moreover, Congress has created a new agency, the Federal Labor Relations Authority, and invested it with the duty to administer the Federal Labor-Management Relations Statute.

The Department of Labor's termination of the 40 dues allotments to AFGE Local 12 was clearly erroneous. In the first place, the Department disregarded the Authority's direction of February 23, 1979, not to honor revocation requests filed on or after January 11, 1979, pending a ruling by the Authority. In the second place, the Department continued to terminate dues allotments even after the Authority's ruling on April 19, 1979, that allotments were revocable only on September 1, 1979, or the anniversary date of the employee's authorization, whichever is later. Hence, the Department's action in terminating allotments from March 24 through June 16, 1979, was wrongful and in violation of the statute, as it has been interpreted by the Federal Labor Relations Authority, the agency Congress empowered to administer the statute and to establish policies and guidance relating to matters arising under the statute. 5 U.S.C. § 7105(a)(1).

Congress has also provided that wrongful actions under 5 U.S.C. chapter 71 shall be remedied through

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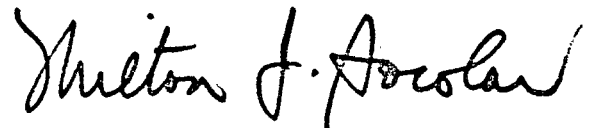
unfair labor practice proceedings. Among other things, the statute provides that it shall be an unfair labor practice for an agency to fail or refuse to comply with any provision of chapter 71. 5 U.S.C. § 7116(a)(8). When the Federal Labor Relations Authority finds that an unfair labor practice has been committed by an agency, the Authority may order such action as will carry out the purpose of the statute. 5 U.S.C. § 7118(7)(D). There need not be a formal finding of a violation by the Authority before payment is made. The General Counsel of the Authority has the duty to investigate charges of unfair labor practices and to issue complaints where appropriate, and he may provide for informal methods of settlement. 5 U.S.C. § 7118(a)(1) and (5). The stated policy of the General Counsel is to encourage voluntary settlements which effectuate the policies of the statute in order to reduce Government expenditures and promote amity in labor relations. In this regard, regulations have been promulgated concerning both formal and informal settlements during the various stages of unfair labor practice proceedings. See 5 C.F.R. § 2423.11 (1980).

We believe that these new statutory provisions governing union dues allotments, together with the evident intent of Congress to provide a remedy for violations of the statute, compel us to conclude that an agency may use appropriated funds to reimburse a labor union for dues allotments wrongfully terminated by the agency in violation of 5 U.S.C. § 7115(a).

However, the payment of union dues is a personal obligation of the employee. Therefore the agency, after using appropriated funds to reimburse the labor union for the agency's error in wrongfully revoking the dues allotments, must seek to recover the amount of the dues from the employees or exercise its power to waive collection from the employees under 5 U.S.C. § 5584 (1976). Our decision in B-180095, October 2, 1975, is modified, to allow an agency to reimburse the union from appropriated funds under circumstances discussed above, and then to collect or waive the debt from the employees.

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Therefore, if the proposed settlement between the Department of Labor and AFGE Local 12 is approved by the Regional Director of the Federal Labor Relations Authority, we would have no objection to the Department's payment to the union of the amount the union would have received if the 40 dues allotments had not been wrongfully terminated in 1979. However, since the dues not withheld remain a personal obligation of the 40 employees, the Department must take action either to collect the dues from the employees or to waive collection of the debts.

A handwritten signature in dark ink, reading "Shelton J. Fowler". The signature is written in a cursive, flowing style with a large initial 'S'.

For the Comptroller General  
of the United States